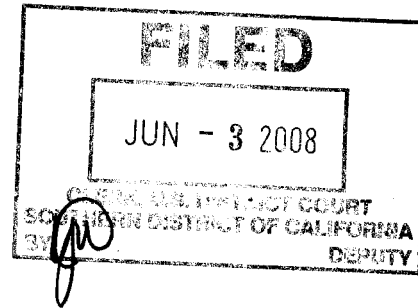


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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIGUEL MERINO-CALVERO (2),

Defendant.

Criminal Case No. 08CR1165-JM

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS AND ORDER  
THEREON**

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Luella M. Caldito, Assistant United States Attorney, and defendant Miguel Merino-Calvero, by and through and with the advice and consent of defense counsel, Mahir Sherif, that:

1. Defendant agrees to execute this stipulation on or before the disposition hearing and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it.

2. The material witnesses, Agustin Cavero-Ortiz, Donaciano Ramirez-Merino, and Silverino Ramirez-Mejia, in this case:

- a. Are aliens with no lawful right to enter or remain in the United States;
- b. Entered or attempted to enter the United States illegally on or about March 27, 2008 with the assistance of Defendant who acted as their foot guide;
- c. Were found with Defendant in a vehicle driven by codefendant Roberto Torres-Hernandez, aka Gregorio Cruz-Merino, near Old Highway 395 and within the

1 Southern District of California and that Defendant knew or acted in reckless disregard of the fact  
2 that they were aliens with no lawful right to enter or remain in the United States;

3 d. Were paying or having others pay on their behalf \$1000 to \$1200 to others  
4 to be brought into the United States illegally and/or transported illegally to their destination therein;  
5 and,

6 e. May be released and remanded immediately to the Department of Homeland  
7 Security for return to their country of origin.

8 3. After the material witnesses are ordered released by the Court pursuant to this  
9 stipulation and joint motion, if defendant withdraws his guilty plea to the charge set forth above,  
10 defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial,  
11 sentencing, appeal or collateral attack, that:

12 a. The stipulated facts set forth in paragraph 2 above shall be admitted as  
13 substantive evidence;

14 b. The United States may elicit hearsay testimony from arresting agents  
15 regarding any statements made by the material witness(es) provided in discovery, and such  
16 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
17 against interest of (an) unavailable witness(es); and,

18 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
19 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
20 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
21 waives the right to confront and cross-examine the material witness(es) in this case.

22 4. By signing this stipulation and joint motion, defendant certifies that defendant has  
23 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
24 further that defendant has discussed the terms of this stipulation and joint motion with defense  
25 counsel and fully understands its meaning and effect.

1 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
2 immediate release and remand of the above-named material witness to the Department of Homeland  
3 Security for return to their country of origin.

4 It is STIPULATED AND AGREED this date.


5 Respectfully submitted,

6 KAREN P. HEWITT  
United States Attorney

7  
8 Dated: June 3, 2008

  
9 LUELLA M. CALDITO  
Assistant United States Attorney

10 Dated: 6/3/2008

  
11 MAHIR SHERIF  
Defense Counsel for Miguel Merino-Calvero

12  
13 Dated: 6/3/2008

  
14 MIGUEL MERINO-CALVERO  
Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witnesses be released and remanded forthwith to the Department of Homeland Security for return to her country of origin.

**SO ORDERED.**

Dated: 6/3/08

